

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

(Oakland, CA)

UNITED SITE SERVICES  
OF CALIFORNIA, INC.,

Employer

and

Case 32-RC-5395

INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS,  
LOCAL UNION NO. 332

Petitioner

**DECISION AND DIRECTION OF ELECTION**

The Employer, United Site Services of California, Inc., sets up temporary electrical services for construction sites and provides fences and portable restrooms for use at construction sites. The Petitioner, International Brotherhood of Electrical Workers, Local Union No. 332, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act to represent a unit of all journeyman and apprentice electricians, groundsmen and auger truck operators employed by the Employer, excluding all project managers, estimators, office staff, and superintendents as defined by the Act. At the time of the hearing, the Employer employed about 23 employees in the unit classifications set forth in the petition, including 17 employees in San Jose and 6 in Stockton.

A hearing officer of the Board held a hearing. Both the Petitioner and the Employer appeared and participated in the hearing. As evidenced at the hearing and in the briefs, two issues are in dispute: (1) whether Joseph Renshaw should be excluded from the proposed

bargaining unit as a statutory supervisor;<sup>1</sup> and (2) whether the office clerical employees in the electrical department share such a significant community of interest with the field employees that they must be included in the proposed bargaining unit. Thus, the parties dispute the status of one alleged supervisor and four office clerical employees.

The Employer contends that Renshaw is a statutory supervisor, while the Petitioner contends that he is not. The Employer further contends that the electrical department office clerks are sufficiently integrated with the petitioned-for employees that they must be included in the proposed unit. The Petitioner contends that the office clerks do not share a community of interest with the petitioned-for employees and that their exclusion from the proposed bargaining unit is appropriate.

I have considered the evidence and the arguments presented by the parties on each of these issues. As discussed below, I have concluded that Joseph Renshaw is a statutory supervisor. I have further concluded that the electrical department clerical employees do not share a sufficient community of interest with the petitioned-for electrical department field employees to require their inclusion in the proposed bargaining unit. Thus, I find that the appropriate bargaining unit consists of all full-time and regular part-time electrical department field employees working at and/or out of the Employer's San Jose and Stockton, California facilities, including auger truck drivers (also called auger truck operators), wiremen (also called linemen), generator servicemen, and groundsmen (also called yard men, yard workers, ground

---

<sup>1</sup> The Employer's brief included an attached post-hearing declaration by Renshaw and the brief referred to that declaration. As that statement was not part of the record, and the Employer provided no justification for re-opening the record to admit that declaration, I am refusing to add the Renshaw declaration to the record and, in making my decision in this case, I have not considered or relied in any way on that declaration or on the arguments in the brief referring to that declaration.

laborers or auger ground laborers); excluding estimators, clerical employees, guards, and supervisors as defined in the Act.<sup>2</sup>

### **THE EMPLOYER'S OPERATION**

The Employer is engaged in the business of installing and servicing temporary power poles, fences and portable restrooms at construction sites. In mid-August 2005,<sup>3</sup> the Employer purchased the assets of Acme & Sons Sanitation, Inc., herein called Acme, which included the San Jose and Stockton California electrical departments that are the subject of the Petition.<sup>4</sup>

Kevin Mellifont, who has been employed by the Employer since about June, is the northern division manager, and, in that capacity, he was responsible for each department in the division, including the electrical department. From mid-August, when the Employer took over the electrical department and other Acme operations, until about late October, Jeff Hermle was the manager for the electrical department, and he reported to Mellifont. During that transitional period, Mellifont had rather limited involvement with Hermle and the electrical department. In late October, Mellifont removed Hermle from his position as the manager of the electrical department and informed Joseph Renshaw that he would be “filling in” for Hermle.<sup>5</sup> In Mellifont’s view, he had made Renshaw the electrical supervisor/acting manager of the electrical department, although, he did not use those words when assigning Renshaw his new

---

<sup>2</sup> According to the Employer, the Employer does not yet have set names for all of the electrical department job classification and uses at least the following designations: auger truck drivers or auger truck operators, wiremen or linemen, generator servicemen, and groundsmen or ground laborers, and, that as of the date of the hearing, there was at least one employee in each of these classifications.

<sup>3</sup> All dates listed herein refer to 2005 unless otherwise stated.

<sup>4</sup> The northern division also includes facilities located in Benicia, Fresno, Sacramento, Salinas, and Santa Rosa California. These facilities do not have electrical department employees, and there is no dispute that the unit should be limited to the electrical department employees assigned to the Employer’s San Jose and Stockton facilities.

<sup>5</sup> Both Mellifont and Renshaw seemed unclear regarding what exactly was said on that occasion and gave somewhat varying accounts. However, on at least one occasion each witness gave a similar version of the conversation. Renshaw said he was told that he would be “filling in” for Hermle, and Mellifont testified that he had told Renshaw that he would be “stepping in” for Hermle.

responsibilities, and there was no change in Renshaw's wage rate.<sup>6</sup> According to Mellifont, it is not yet clear whether Hermle will return to the electrical department, and it appears that if he does return, it will not be as the manager. The record also shows that the Employer has not yet decided how long Renshaw will be in the electrical supervisor/acting manager position he now holds.

The electrical department office space consists of six cubicles in the San Jose office, including one for the department manager, one for the supervisor, and four for the electrical department clericals.<sup>7</sup> These cubicles are located together on one side of a large, open office that the electrical department shares with the Employer's departments that are responsible for the temporary fencing and portable restroom sides of the business. The electrical department is not separated by walls from the Employer's other departments, and there are clerical employees in these other departments who perform work that is similar to that performed by the electrical department clerical employees for the electrical department. The record shows that electrical department clericals work on invoicing and collections, and they deal with customers, prepare dispatching paperwork, and have communications with the electrical employees in the field. In situations where an electrical department clerical is dealing with a customer about an electrical issue, and the customer also raises an issue regarding portable toilets or some other phase of the Employer's operations, the electrical department clerical may assist the customer on that non-electrical matter.

As stated above, the Petitioner seeks to represent all of the electrical department field employees. Although the petition requested "all journeymen and apprentice electricians," the record reflects that the Employer has no employees with the job title of "electrician." Thus, the

---

<sup>6</sup> Mellifont testified that as a manager, Renshaw would be eligible for consideration for a bonus, but that no decisions had yet been made regarding the managerial bonuses that would be given for this year.

<sup>7</sup> According to Mellifont, one of the four clericals is a lead-person.

field employees sought by Petitioner include about five auger truck operators, eight wiremen, two generator servicemen, and eight groundsmen, who work interchangeably in the yard at the Employer's facility or the field.

The auger truck operators drive auger trucks to the job sites and use them to drill holes for the power poles. The auger truck operators also lift the poles and place them into the ground. The wiremen, also called linemen, string the wires on the power poles after the poles have been installed in the ground and then connect the wire to the electrical subpanels. The generator servicemen perform on-site maintenance of the generators leased by the Employer. The groundsmen work either in the yard at San Jose or in the field, depending on where they are assigned. In the field, they work as auger laborers, assisting the auger truck operators with installing the power poles. When working at the Employer's San Jose facility, they work as yardmen at the San Jose facility preparing the power poles and auger trucks for use in the field. For example, yardmen install boxes and signs on the poles, and they load the trucks. The yard work at the San Jose facility is overseen by Edgar Rodriguez, the yardmen crew lead.<sup>8</sup> The auger laborers and yardmen are generally referred to as groundsmen, because their positions are interchangeable. At the San Jose facility, the yard where the yardmen work consists of two small sheds with a canopy. The yard is located about 600-700 feet away from the electrical department office space in the main building. Each morning, the field employees receive their work assignments at a counter, or drivers desk, which is located in the office building, about 15 feet away from the electrical department office space. The same counter is used by the service and dispatch drivers from the other departments, although some of the counter space is designated solely for electrical department drivers.

---

<sup>8</sup> Neither party contends that Rodriguez is a statutory supervisor.

## **DISCUSSION**

### **Renshaw's Supervisory Status**

#### **Renshaw's Work History**

As stated above, on October 31, Renshaw was told that he was “stepping in” for the previous manager. From the Employer’s perspective, that meant that Renshaw had become the electrical supervisor/acting manager of the electrical department. In the two weeks prior to October 31, Renshaw had worked in the Employer’s San Jose office for about two weeks at the electrical supervisor’s desk; however, the parties dispute his job title during that two week period. The Employer maintains that Renshaw’s title was electrical supervisor. The Employer bases its position primarily on the fact that it believed that Renshaw, who had previously worked for Acme, had been the electrical department supervisor for that company prior to its acquisition by the Employer.<sup>9</sup>

Renshaw agrees that he had been the electrical supervisor for Acme, however, also testified without contradiction that Hermle had stripped him of his supervisory authority prior to the sale of Acme to the Employer, and that until about mid-October, Renshaw spent the bulk of his time doing regular field work or working at the San Jose facility preparing maps/diagrams showing the layouts of the worksites at which the field crews were going to make their installations. He rotated his time on a biweekly basis, spending two weeks in the field, followed by two weeks in the office doing mapping. Mellifont testified that the Employer was unaware of that demotion and of the limited duties Renshaw had performed during the period after the Employer purchased Acme.

---

<sup>9</sup> Mellifont also testified that he was aware that Renshaw had served as the acting manager for several weeks while he was working for Acme. In his testimony, Renshaw confirmed that he had done so.

In about mid-October, Hermle asked Renshaw to assist in the office as a temporary dispatcher. Renshaw testified that Hermle conducted an employee meeting where he announced to employees that Renshaw would be the temporary dispatcher.

#### Renshaw's Current Position

On about October 31, Mellifont informed Renshaw that he would be “stepping in” for Hermle. Mellifont did not tell Renshaw how long he would be standing in for Hermle, and the evidence establishes that Renshaw has assumed Hermle’s responsibilities indefinitely. Although Mellifont did not tell Renshaw exactly what his job title would be or what his specific duties were, the evidence demonstrates that Renshaw has been performing Hermle’s duties as manager of the electrical department since October 31. As the acting manager, Renshaw oversees all electrical department employees, including both the field employees and the clerical employees. He establishes the field employees’ regular work schedules, including their regular start times. He also decides whether to send employees home early when work is slow and whether to direct them to work overtime to finish a job. Mellifont does not supervise or dictate Renshaw’s decisions regarding employee work schedules. Renshaw also makes the daily route assignments, called “run sheets,” for the field employees. He assigns them to specific jobs using his own discretion based on his knowledge of the job, the employee’s equipment, and the employee’s experience.<sup>10</sup>

In addition to deciding which jobs to assign to which employees, Renshaw also prioritizes the jobs. He schedules the order of the jobs and instructs employees which jobs to do first. Renshaw testified that he prioritizes the jobs based on his own discretion, pursuant to

---

<sup>10</sup> I note, however, that other than the groundsmen, who can be assigned to either the yard or the field, Renshaw typically does not assign employees to work outside of their job classifications. Thus, wiremen are assigned wireman’s work. Auger truck operators are assigned auger work, etc. I also note that auger drivers are assigned to particular trucks, which vary in size, and there is no evidence that Renshaw has re-assigned any auger drivers from one truck to another. Renshaw often makes an auger operator’s assignment based on the size of the truck they drive.

which he tries to assign jobs geographically as a practical matter, putting jobs in the same area together so no time is wasted. After he has made the daily job assignments, he can change, add to or re-prioritize the job assignments during the workday. He can also reassign an employee to a different job as the need arises.

Renshaw assigns groundsmen to work either in the yard or the field at his own discretion. He testified that he has chosen to exercise that discretion by rotating groundsmen between the yard and the field in order to give them different work experiences. The Employer has no guidelines about providing work experience for the groundsmen. Renshaw decides at his own discretion when to rotate them. Renshaw assigns work to the yardmen on-site, such as what poles to build or what to load into the trucks. He also changes the yardmen's job assignments midday if he needs to do so. He testified that he has sent yardmen from the yard to the field midday.

Renshaw also approves time off requests, including paid time off, as well as requests to leave work early. All electrical department employees must submit their time off requests to him, and no other manager's approval is needed. Griselda Barron, a clerical employee, testified that Renshaw has approved time off requests, as well as requests to leave work early, for both the field employees and the clerical employees since he became the acting manager.

In addition to employee requests to take time off by leaving work early, Renshaw has the authority to send employees home when there is no work for them to do. Since becoming the acting manager, he has told employees to go home early on five occasions when the employees asked to leave because there was no work to do. Renshaw did not consult with Mellifont or any higher manager before sending the employees home. He used his own discretion to allow them to leave.



Renshaw authorizes overtime. When employees do not finish a job, they must call him for approval before staying late. They ask him whether he wants them to work overtime or finish the job later. If Renshaw authorizes overtime, he has to initial his approval on the employees' timesheets to confirm that they worked overtime before they will receive overtime pay. Renshaw testified that he has authorized overtime about once a week since becoming the acting manager.

Renshaw's responsibilities also include reviewing employee attendance sheets and authorizing the payroll. He compares the daily time logs that employees record in the field with the timesheets generated by the time clock to make sure the hours match and to incorporate the break times recorded by employees in the field. Employees are paid for the hours that he authorizes after he initials the timesheets.

Renshaw is a Statutory Supervisor.

Section 2(11) of the Act defines a supervisor as one who has "authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such actions, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but would require the use of independent judgment." The statute expressly requires that a supervisor: 1) have authority; 2) to use independent judgment; 3) in performing such supervisory functions; 4) in the interest of management. The requirements are conjunctive. NLRB v. Security Guard Service, 384 F.2d 143, 147-148 (5<sup>th</sup> Cir. 1967). An individual needs to possess only one of the supervisory powers enumerated in Section 2(11) to be deemed a supervisor, provided that the power is exercised in

the employer's interest and involves the use of independent judgment in a manner which is more than routine or clerical. Harborside Healthcare, Inc. 330 NLRB 1334 (2000).

Here, as discussed, Renshaw assigns work to employees, including assigning employees' work schedules and their daily job assignments. Renshaw further coordinates the yard work with the field work by instructing the yard employees as to what poles to build or what trucks to load. He uses his own discretion to set employees' start times, to reduce their hours of work by sending them home early, or to increase their hours of work by directing overtime. Renshaw also authorizes time off requests for both field and clerical employees. No upper manager advises or reviews Renshaw's decisions regarding employee schedules, hours of work, or time off requests.

When making job assignments, Renshaw typically sets the field employees' routes by grouping jobs in the same area on the same route to ensure that no time is wasted. Although assigning routes based on geography is somewhat routine in nature, geography is not Renshaw's only consideration. Renshaw testified that he also considers the nature of the job, the equipment available for the job, and the date the customer order was placed. Based on these factors, he uses his independent judgment in the interest of management to prioritize and assign jobs to employees, and on occasion to change an employee's work assignment based on his assessment of work needs. The Employer has no guidelines for making, changing, adding, or prioritizing job assignments. Rather, the evidence demonstrates that Renshaw makes the assignments based on his own independent judgment with no direction or review by upper management.

There is no evidence that Renshaw, during his short tenure as the acting manager, has hired, transferred, discharged, laid off, recalled, promoted, rewarded or disciplined employees, or adjusted their grievances during the approximately one month that he had served as the acting

manager of the electrical department. However, Mellifont's uncontradicted testimony is that Renshaw has the authority, in the interest of the Employer, to hire employees and set their pay rates, to discipline and/or discharge employees, to conduct performance reviews, and to adjust employee grievances. According to Mellifont, this authority belongs to the electrical department manager who is responsible for managing the 23 field employees and 4 office employees in that department. The record establishes that Hermle exercised such authority when he was the manager.<sup>11</sup> When the Employer made Renshaw the acting manager, it decided that Renshaw was assuming all of Hermle's responsibilities and authority for an indefinite period. Although Mellifont did not specifically tell Renshaw that he had that full range of authority, and Renshaw has not yet been called on to exercise such authority, Renshaw did know that Hermle had had much if not all of the supervisory authority referred to by Mellifont and that he was filling in for Hermle as the highest ranking person in the electrical department. In fact, Renshaw knew that he was the only supervisor in that department. Moreover, there is no evidence showing that Mellifont exercised any of this authority after telling Renshaw that he was stepping in for Hermle. Indeed, none of the Employer's regular managers, including Mellifont, had any prior experience with electrical department work when the Employer purchased Acme.

The assignment of work is one of the primary indicia of supervisory authority enumerated in Section 2(11) of the Act. The evidence shows that Renshaw has broad authority in all aspects of the assignment of work, and that he is the only person involved in the assignment of work. In carrying out this assignment of work authority, he exercises significant

---

<sup>11</sup> For example, there is testimony that Hermle hired numerous employees when he was the Acme manager. Mellifont also testified that after the Employer took over for Acme, Hermle decided that he needed to hire an employee, interviewed the employee and then submitted the hiring papers for Mellifont's approval. Mellifont states that he signed the papers solely based on Hermle's recommendation and made no independent investigation. Renshaw testified that under Acme, Hermle demoted him and took away some of his authority as a punishment for Renshaw not supporting Hermle on a disciplinary matter, and that after the Employer had replaced Acme, Hermle reinstated some of Renshaw's authority and ceased assigning Renshaw field work.

discretion in the interests of the employer. I therefore find that Joseph Renshaw is a statutory supervisory. As such, he will be excluded from the unit herein found appropriate. Arlington Masonry Supply, Inc., 339 NLRB 817 (2002); and Custom Bronze & Aluminum Corp., 197 397 (1972).

Moreover, I also find that the evidence establishes that Renshaw, as the acting manager, had essentially the same authority as Hermle, at least with regard to disciplining employees and effectively recommending the hiring of employees. This authority, even though never exercised, is a further basis for concluding that Renshaw is a supervisor as defined in the Act. See Fred Meyer of Alaska, Inc., 334 NLRB 646 (2001) <sup>12</sup>

### **Clerical Employees Community of Interest**

#### **Clerical Duties**

The Employer's electrical department includes four clerical employees who work at the San Jose facility. The clerk's engage in a wide variety of clerical functions, including invoicing and collection-related work. The clerk's primary job duty, however, is to receive and process customer orders for the installation, retrieval or relocation of the Employer's power poles. The clerks answer customer telephone calls and take all relevant information regarding the order. They type this information into the computer and create a work order, called a delivery tag, which includes the customer's name, billing address, phone number, name of the person who placed the order, cell phone number, job location, city, map coordinates, job description, and quantity. The clerks routinely schedule all work to be performed 3-4 days from the order date. They then print the delivery tags and put the hard copies in Renshaw's in-box.

---

<sup>12</sup> Because the evidence shows that since October 31, Renshaw has been serving as an acting manager, or as an electrical supervisor/acting manager rather than as an electrical supervisor, and because it is not clear when, if ever, the Employer will have some one serving purely as an electrical supervisor, I need not make any findings regarding whether the electrical supervisor position is, in and of itself, a Section 2(11) supervisory position, or regarding Renshaw's supervisory status prior to October 31.

When Renshaw receives the delivery tags, he determines the priority of the orders and schedules the particular date that each order will be completed. Renshaw routes the orders on a daily basis, assigns them to particular employees, and puts the orders on the drivers' individual clipboards. Each driver has a clipboard, and Renshaw distributes the clipboards each morning with the drivers' daily work assignments attached to them.

Unless a problem arises or a change needs to be made to a work order, the clerks have no direct interaction with the field employees regarding the delivery tags. The clerks give the tags directly to Renshaw, the acting department manager, and he assigns them to the field employees. However, because the clerks are responsible for customer contact, the field employees call them when an issue arises that requires contacting the customer. For example, if an auger truck operator arrives at a job site to remove a power pole and sees that the meter is still attached, he calls a clerical employee and asks her to contact the customer regarding the problem. If a truck operator has questions about which poles to remove or where the poles need to be installed, he calls a clerk and asks her to call the customer to clarify the order. Griselda Barron, the lead clerk, testified that she receives 10-15 calls a day from auger truck operators. Her calls with the operators last between 1-10 minutes, but most are in the one-minute category. Most of the time, an operator calls her just to ask her to let the customer know he is at the job site or to confirm the location of an installation.

Barron testified that the clerks also receive calls from the wiremen, but offered no testimony as to the types of calls or how many she receives. Chris Silver, a wireman, testified that he only has to deal with the clerks when there is a problem at the job site, such as a wire that needs to be removed. In that case, he calls a clerk to generate a delivery tag for the extra work. Silver testified that apart from unexpected issues that arise at the job, he has no dealings with the

clerks. He does not have to call a clerk more than once a day. He further testified that clerks call him even less than he calls them, only 1-2 times per month. The clerks do not go into the field, nor do they go into the yard where the yardmen work on-site.

The clerks do not take their breaks or lunches with the field employees. The clerks have a one-hour lunch break, while the field employees have a half-hour lunch break. Even the yardmen who work on-site do not use the break room used by the clericals. The yardmen take their breaks in the yard where they work, which is located 600-700 feet away from the office space used by the clericals.

Clericals Employees Do Not Share a Significant Community of Interest with Field Employees.

Under Section 9(b) of the Act, the Board has broad discretion to determine “the unit appropriate for the purposes of collective bargaining” in each case “in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act.” NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-497 (1985). The Board has the discretion to select an appropriate unit from the range of units which may be appropriate in any given factual setting; it need not choose the most appropriate unit. American Hospital Association v. NLRB, 499 U.S. 606, 610 (1991); Overnite Transportation Co., 322 NLRB 723 (1996). Rather, the resolution of unit composition issues begins with an examination of the petitioned-for unit. Only if it is inappropriate will an alternative unit be found. Bartlett-Collins Company, 334 NLRB 484 (2001). Here, the Petitioner contends that a unit consisting of only the field employees, including the yardmen, is an appropriate unit, and the Employer asserts that a unit consisting of the electrical department field employees must also include the electrical department clerical employees.

In determining whether the petitioned for unit is an appropriate unit, the key question is whether the employees share a sufficient community of interest. Alois Box Co., Inc., 326 NLRB 1177 (1998); Washington Palm, Inc., 314 NLRB 1122, 1127 (1994). In making this determination, the Board weighs a variety of factors, including (1) integration of operations, (2) centralization of managerial and administrative control, (3) geographic proximity, (4) similarity of working conditions, skill, and functions, (5) common control over labor relations, (6) collective bargaining history, and (7) interchangeability of employees. NLRB v. Paper Mfrs. Co., 786 F.2d 163 (3d Cir. 1986); Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962). None of the above factors is controlling and there are no *per se* rules to include or exclude any classification of employees in any unit. Airco, Inc., *supra* at 348. For the reasons set forth below, I find that the employees in the petitioned for unit share a sufficiently unique community of interest to constitute an appropriate unit without the inclusion of the clerical employees.

The evidence shows that the field employees regularly work at construction sites many miles away from the facility, while the clerical employees work in the Employer's main office. Although the groundsmen do perform a substantial amount of work at the Employer's facility, they perform that work about 600 to 700 feet away from the building in which the clerical employees perform their work. Although there is telephonic communication between some clerical and field employees, the employees do not take breaks or lunch together and do not work the same hours.

It is also readily apparent that the clerical and field employees perform very different types of work and that they have very different skill sets. The clerical employees work inside an office and spend the bulk of their time working with computers, telephones, printers and paperwork, while the field employees work outside with a variety of tools performing manual

labor, including such complex and dangerous construction work as the installation of electrical power and the erection of power poles for construction sites. Because of these extensive differences, it is not surprising that there is no evidence that clerical employees temporarily work as field employees or visa versa.

In sum, the record demonstrates substantial differences between the field employees and the clerical employees with respect to the employee's jobs, functions, skills, geographic location and general working conditions that are sufficient to warrant a finding that the field employees share a sufficiently unique community of interest to constitute a separate appropriate unit, notwithstanding the fact that the clerical employees are in the same department, and under the same department manager, as the field employees. Thus, while the latter evidence has some bearing as to the appropriateness of the combined unit proposed by the Employer, it is insufficient to preclude a finding that the petitioned-for unit is an appropriate unit, which is the determinative issue before me.<sup>13</sup> Accordingly, I find the electrical department field employee unit sought by the Petitioner to be an appropriate unit.

### **CONCLUSIONS**

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, including the parties' arguments made at the hearing and the brief filed by the Employer, and in accordance with the discussion above, I conclude and find as follows:

---

<sup>13</sup> It must also be noted that the Employer has clerical employees from other departments who are working in the same large office space (no walls separating the employees) as the electrical department clericals. These other clerical employees have the same skills and functions as the electrical department clericals, even though they perform the work for other departments. Other than the fact that they have different supervisors, it appears that the other clerical employees share many of the same working conditions as the electrical department clericals. In these circumstances, the electrical department clericals would share a stronger community of interest with their fellow clerical employees than they share with the field employees.



1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is a California corporation with a facilities in various locations within the state of California, including a facility and main office located in San Jose, California, where it is engaged in the business of providing portable restroom services, portable fences, and temporary power primarily to contractors, municipalities, corporations and other entities at construction sites. The parties also stipulated that during the past 12 months, the Employer in conducting its business operations has purchased and received at its California facility goods valued in excess of \$50,000 directly from suppliers located outside the State of California facilities. Based on these facts, the parties also stipulated, and I find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act. In these circumstances, I find the assertion of jurisdiction in this case to be appropriate.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

4. The Petitioner claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer at its Stockton, California facility constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time electrical department field employees working at and/or out of the Employer's San Jose and Stockton, California facilities, including auger truck drivers (also called auger truck operators), wiremen (also called linemen), generator servicemen, and groundsmen (also called yard men,

yard workers, ground laborers or auger ground laborers); excluding estimators, clerical employees, guards, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local Union No. 332. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). The undersigned shall make the list available to the Petitioner when the undersigned shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **December 23, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **December 30, 2005**. The request may **not** be filed by facsimile. In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance electronic filing can also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlr.gov](http://www.nlr.gov).

Dated: December 16, 2005

---

William A. Baudler, Acting Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street, Suite 300N  
Oakland, CA 94612-5211

32-1312

177-8520-0800  
177-8520-1600  
177-8520-4700  
177-8520-6200  
440-1760-2960